



ADMINISTRATION FOR
CHILDREN & FAMILIES

330 C Street, S.W., Washington, DC 20201 www.acf.hhs.gov

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

February 21, 2018

(b)(6);(b)(7)(C)

International Educational Services
594 Jose Marti Boulevard
Brownsville, TX 78526-1787

RE: Grant No.: 90ZU0234/01; 90ZU0235/01; 90ZU0236/01; 90ZU0237/01; 90ZU238/01;
90ZU0239/01; 90ZU0240/01; 90ZU0241/01; and 90ZU0242/01

Dear (b)(6);(b)(7)(C)

This letter constitutes official notification that the U.S. Department of Health and Human Services (HHS), Administration for Children and Families (ACF) will not be awarding a Year 2 Non-Competing Continuation award (NCC) for the above referenced grants, which were initially funded under the Office of Refugee Resettlement's, Standing Announcement for Residential (Shelter) Services for Unaccompanied Children, Funding Opportunity Number HHS-2017-ACF-ORR-ZU-1132.

This decision is based on information provided to ACF by the Office of Inspector General (OIG) resulting from an audit conducted by the Office of Audit Services, within the OIG which began in June 2016. In September 2017, the OIG identified to ACF findings that included less than arms-length agreements related to property leases, violation of executive compensation levels, non-compliance with conflict of interest requirements and procurement procedures, and numerous examples of substantial failures of IES failing to comply with regulations governing allowable costs under HHS awards. As a result of these findings, on November 2, 2017, ACF placed IES on drawdown restriction (Costs Reimbursement) due to concerns regarding your organization's lack of effective control over, and accountability for federal funds, property, and other federal assets. IES was also prohibited from requesting draw down of federal funds without ACF's prior approval.

As provided by your award terms and conditions found in the HHS Grants Policy Statement (GPS) at II-89, the awarding agency may decide not to make a non-competing continuation award within the current competitive segment if a recipient failed to meet the terms and conditions of a previous award. IES failed to comply with the Uniform Administrative Requirements and Cost Principles as required by the Code of Federal Regulations, found in Title 45 Part 74 and 45 Part 75. HHS grant regulations governing non-profit entities are found in

45 CFR § 74 for awards issued prior to December 26, 2014 and 45 CFR § 75 for awards issued after December 26, 2014.

ACF has determined the following areas of non-compliance based on findings that resulted from the OIG's audit of IES' Fiscal Year 2015 grants:

- IES failed to demonstrate compliance with Federal requirements of Financial Management and standards for financial management systems as required by 45 CFR § 75.302, and internal controls as required by 45 CFR § 75.303.

- **Excessive Executive Compensation**

IES awards were subject to limitations and requirements of the Consolidated Appropriations Act, which limits the salary amount that may be awarded and charged to ACF grants and cooperative agreements for executive compensation. Award funds issued may not be used to pay the salary of an individual at a rate in excess of Executive Level II. The Executive Level II salary of the "Rates of Pay for the Executive Schedule" at that time was \$183,300. This amount reflects an individual's base salary exclusive of fringe benefits and any income that an individual may be permitted to earn outside of the duties of the applicant organization. This salary limitation also applies to subawards and subcontracts under an ACF grant or cooperative agreement.

IES paid executives salary compensation through its indirect or overhead accounts. The amounts paid exceeded the Executive Compensation limit of \$183,300. Based upon our review of W-2s, Box 5, salaries were paid to executives as follows:

(b)(6);(b)(7)(C)	\$506,003.22
	\$492,001.62
	\$377,060.96
	\$208,190.49
	\$185,000.06

IES did not comply with the award terms and conditions regarding the Federal Financial Accountability and Transparency Act of 2006 (FFATA), executive reporting requirements which requires large grantees to report the compensation of its top five paid employees. The Notice of Award for IES clearly stated that this condition applied to the IES grants. (See for example, p. 10 of attached Audit Documentation, as well as Audit Documentation beginning on p. 365).

- **Standards of Conduct**

IES failed to comply with the Public Policy requirement regarding Standards of Conduct for Recipient Employees found in GPS Section II-7, which states recipients are required to establish safeguards to prevent employees, consultants, members of governing bodies, and others who may be involved in grant supported activities from using their positions for purposes that are, or give the appearance of being, motivated by desire for private

financial gain for themselves or others, such as those with whom they have family, business, or other ties. In addition, IES signed the required SF-424B Assurances for Non-Construction programs certifying the recipient would establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

The following family members received compensation under IES awards:

(b)(6);(b)(7)(C)

As discussed below, (b)(6);(b)(7)(C) doing business as Ideal Realty, maintained more than a dozen less than-arms-length leases with IES of either land or buildings.

(b)(6);(b)(7)(C) also maintained a number of less than arms-length leases, either by doing business as ILT Enterprizes, or through a limited Partnership of GaCris, LP.

(b)(6);(b)(7)(C) was paid in the amount of about \$15,000 in consulting fees. (b)(6);(b)(7)(C)

(b)(6);(b)(7)(C) was paid for a related-party vehicle sale, which appears to have netted a profit in the amount of \$3,000.

- **Leases/Rent**

Less than arms-length transactions/conflict of interest

IES failed to demonstrate that their lease agreements and rent expenditures meet the standards as required by 45 CFR Subpart E, 75.465 rental costs of real property and equipment. In addition, the SF-424B contains assurances whereby the recipient certifies that it will “establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.” (SF-424B available at:

<https://www.grants.gov/web/grants/forms/sf-424-family.html#sortby=1>)

IES leases the San Benito Shelter and buildings at the Driscoll Shelter from ILT Enterprizes and GaCris, L.P. According to the State of Texas Secretary of State filings, ILT Enterprizes is the Director of GaCris, L.P. GaCris, L.P. is a limited partnership in which (b)(6);(b)(7)(C) has a 50 percent interest. (See p. 77-78, 84 of attached audit documentation). The Director and Manager of ILT Enterprizes is (b)(6);(b)(7)(C) he is also the (b)(6);(b)(7)(C) of IES. *Id.* These arrangements constitute a less than-arms-length transaction.

As the (b)(6);(b)(7)(C) of IES, (b)(6);(b)(7)(C) is a key employee of the non-profit organization and thus IES is prohibited from entering into a lease with any corporation in which (b)(6);(b)(7)(C) holds a controlling interest. In addition, IES appears to have entered into more than a dozen leases with Ideal Realty, which the leases show was a corporation controlled by (b)(6);(b)(7)(C) (the leases are actually between IES and

(b)(6);(b)(7)(C) “dba Ideal Realty.”) IES also charged full rental for these leases, rather than following the regulations that would govern less than-arms-length transactions. Yet another lease shows that IES knowingly entered into lease agreements with (b)(6);(b)(7)(C) and, apparently, (b)(6);(b)(7)(C) relative (b)(6) for portable structures. (b)(6);(b)(7)(C) is the (b)(6);(b)(7)(C) of IES. (see attached Audit Documentation, p. 91, 99)

- **Procurement Standards**

IES failed to demonstrate their organization’s procurement transactions meet the Procurement Standards as required by 45 CFR § 75.327 and 45 CFR § 74.43-46. IES did not obtain necessary competitive bids or perform cost or price analysis for purchases. For example, IES spent millions in funds that were awarded to Ybarra Construction, without competitive bidding. (See Audit Documentation beginning at p. 285). Other funds (in the millions or hundreds of thousands) were awarded to other independent contractors without demonstrating compliance with procurement regulations. Under procurement regulations, “procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition.” 45 CFR 74.43. The recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft grant applications, or contract specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so.” All grant recipients must have written procurement procedures,” 45 C.F.R. § 74.44, and must have “some form of cost or price analysis . . . made and documented in the procurement files Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.” 45 C.F.R. § 74.45. (See also 45 C.F.R. § 75.328). The De § mental Appeals Board also has upheld disallowing the full amount of payment when a grant recipient has failed to comply with the procurement regulations. In National Alliance on Mental Illness (NAMI), DAB No. 2612 (2014), the DAB found that because none of NAMI’s records showed documentation of competing bids and NAMI did not consider other companies for work, charges associated with a project were disallowed. According to the OIG, IES had written procurement procedures that outlined requirements for obtaining quotes or bids for purchases in adherence with Federal regulations but failed to follow such procedures. IES also could not provide documentation to the OIG or procurement records to show a basis for the contract selected or a justification for a lack of competition or sole source as required by 45 C.F.R. § 74.46. OIG could not verify that funds paid to independent contractors for

services rendered or items purchased under Independent Contractor agreements had been procured using competitive bids or quotes, or using any form of cost or price analysis as required under 45 C.F.R. § 74.

- **Unauthorized Leasehold Improvements for Non-Operational Shelters**

The OIG found that IES spent millions in Federal funds to make major renovations to the San Benito Shelter, including during FY 15, when the shelter was not operational. Specifically, IES expended \$8,493,168.70 in FY 15 for the shelter during the time it was not in operation. Grant funds were spent on a lease, to make major renovations and to pay for security during a time that the shelter was not being used to house UAC. (See Audit Documentation at p. 45 showing that that San Benito shelter was not licensed until FY 2016 on October 7, 2015; pp. 61-62 of Audit Documentation, documenting major renovations).

The HHS Grants Policy Statement makes clear that: “To provide support for construction or modernization that is considered ‘major,’ an OPDIV must have specific statutory authority allowing construction or modernization. Even if an OPDIV has this authority, a recipient may not incur costs for construction or modernization unless the OPDIV specifically authorizes such costs.” HHS GPS, p. II-98: Construction and Modernization of Facilities. <https://www.hhs.gov/sites/default/files/grants/grants/policies-regulations/hhsgps107.pdf>. Similarly, Part IV.5 of the Funding Opportunity Announcement for FY 15 HHS-2015-ACF-ORR-ZU-0833 made clear that “Construction is not an allowable activity or expenditure under this grant award.”

- **Other**

Other instances of IES showing what appears to be a disregard for the rules governing recipients of HHS Federal funds appear below. While some of these dollar figures appear to be low, the nature of the expenditures demonstrate a willful ignorance or reckless disregard of the rules that govern HHS awardees.

- Approximately \$2,600 paid in property tax for a personal residence owned by (b)(6);(b)(7)(C)
- An unallowable donation to a charity in the amount of \$2,000. (Contributions and donations rendered are excluded from being allowable costs under the cost principles. See 2 C.F.R. § 230, Appendix B. 12, stating: “Contributions or donations, including cash, property, and services, made by the organizations, regardless of the recipient, are unallowable.)
- Unallowable leases of Vacant Land. Approximately 26 acres (on Ebony Road) and 19 acres (on Maverick Road and Southmost Road) owned by (b)(6);(b)(7)(C) were leased by IES (See attached audit documentation). In addition, (b)(6);(b)(7)(C) (b)(6);(b)(7)(C) was paid by IES for clearing the vacant property. (Audit Documentation starting at p. 257). Vacant land not being used to serve UAC would not appear to “necessary and reasonable for the performance of the Federal award.” 45 C.F.R. § 75.403(a); 2 CFR § 230 Appendix A; General Principles 2.

For the reasons stated above, ACF has determined that IES has failed to comply with award terms and conditions. If a non-competing continuation award is withheld because the recipient failed to comply with the terms and conditions of a previous award, the recipient may appeal that determination.

This is the final decision of the U.S. Department of Health and Human Services, Administration for Children and Families.

Under 45 CFR § 16, you may appeal this decision to the HHS Departmental Appeals Board (DAB). This decision shall be the final decision of the U.S. Department of Health and Human Services unless your organization decides to appeal. To appeal, you must, within 30 days of receipt of this decision, mail or deliver a written notice of appeal within 30 days of receipt of this decision.

A notice of appeal may be submitted to the DAB by mail, electronically using the DAB's electronic filing system (DAB E-File), or by facsimile (fax) if fewer than 10 pages. Submissions are considered made on the date they are postmarked, sent by certified or registered mail, deposited with a commercial mail delivery service, faxed (where permitted), or successfully submitted into DAB E-File. Submissions should include: (1) a statement of the amount in dispute; (2) a brief statement of why the decision is wrong; and (3) a copy of the disallowance letter or other final decision.

Notices of appeal may be mailed to:

**Department of Health & Human Services
Departmental Appeals Board, MS 6127
Appellate Division
330 Independence Ave., S.W.
Cohen Building, Room G-644
Washington, D.C. 20201**

Faxed notices of appeal (permitted only if the notice of appeal is fewer than 10 pages), should use the Appellate Division's fax number, (202) 565-0238.

To use DAB E-File to submit a notice of appeal, you or your representative must first become a registered user by clicking "Register" at the bottom of the DAB E-File homepage, <https://dab.efile.hhs.gov/>; entering the information requested on the "Register New Account" form; and clicking the "Register Account" button. Once registered, you or your representative should login to DAB E-File using the e-mail address and password provided during registration; click "File New Appeal" on the menu; click the "Appellate" button; and provide and upload the requested information and documents on the "File New Appeal-Appellate Division" form. Detailed instructions can be found on the DAB E-File homepage.

The DAB will notify you of further procedures. Please send copies of the appeal to the Director, Division of Discretionary Grants, Office of Grants Management, and the Commissioner, Family and Youth Services Bureau, at 330 C Street, SW, Washington, DC 20201.

If you have any questions concerning this letter, please contact Daphne Weeden at 202-401-4577 or Daphne.weeden@acf.hhs.gov, or you may contact Jallyn Sualog at 202-401-4997 or Jallyn.sualog@acf.hhs.gov.

Sincerely,

[Redacted]
[Redacted]
(b)(6)

E. Scott Lloyd
Director
Office of Refugee Resettlement
Administration for Children and Families

[Redacted]
(b)(6)

Daphne J. Weeden
Director
Division of Discretionary Grants
Office of Grants Management
Administration for Children and Families